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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 76-811

Regents of the University of California,

Petitioner,

v.

Allan Bakke,

Respondent,

BRIEF OF RALPH J. GALLIANO AS AMICUS CURIAE

Ralph J. Galliano

~~PRO SE~~,

AS AMICUS CURIAE

6109 Garfield Street

Hollywood, Florida

33024

John S. Nolan
1700 Pennsylvania Ave. N.W.
Washington, D.C. 20006

Counsel for Ralph J. Galliano
as Amicus Curiae

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BRIEF OF RALPH J. GALLIANO AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

Ralph J. Galliano respectfully submits this brief as amicus curiae in support of the concept of special admissions programs based on racial neutrality. The consent of the attroneys for both petitioners and respondents to the filing of this brief has been obtained.

On April 1, 1976, Ralph J. Galliano was denied admission to the University of Florida

Holland Law Center. On May 4, 1976, he was informed that this decision was predicated on his not being a minority conspicuous to the State of Florida. This rejection related to his application under the Law Center's Special Admissions Program for which he qualified. However, the Law Center insisted on limiting its special admissions program to blacks, Spanish-speaking people and American Indians to the exclusion of other qualified disadvantaged individuals. On July 6, 1976, Associate Dean E. L. Roy Hunt on behalf of Dean Julin indicated that after lengthy discussion regarding their files, both gentlemen concluded that the U. of F's Special Admissions policy was entirely consistent with the spirit and intent of both federal and state affirmative action legislation.

This applicant does not contend he be admitted as a member of a specific minority group as the Law Center implies; but rather

that he be admitted because under a properly administered special admissions program he is a highly qualified applicant.

Mr. Galliano's interest in the instant case is accordingly direct and vital. It is likely that the Court's decision herein will directly affect his claim for admission to the University of Florida Holland Law Center. As such, he hereby submits this brief setting forth his views, Pro Se, as to the questions of law and the application of controlling constitutional principles presented by the instant case.

ARGUMENT

It is unlawful for the U. of *F*. as a federally funded institution to continue its preferential admissions policy based on this racial criteria. During the floor debates on the Civil Rights Act of 1964, Senator Humphrey, addressing this issue, said:

> Simple justice requires that public funds, to which all tax-

> payers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. 110 Cong. Rec. 6543 (1964)

Both statutory and case law confirm this position. Title VI, Sec. 601; 42 U.S.C. §2000d, of the Civil Rights Act of 1964 provides:

> No person in the United States shall, on the ground of race, color, religion or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

In Joyner v. Whiting, the court held:

> No State or Agency of a State may discriminate upon the basis of race, color or national origin. No Institution of Higher Education, established and financially supported by a State, may use racial criteria in its employment practices, or in its admission policies, or in its academic program. No agency of such Institution, nor any other official body may use racial criteria. United States v. Georgia, et al., Civil No. 12,972 (N.D. Ga. 1969); Georgia,

> et al. v. Mitchell, et al., Civil No. 265-70 (D.D.C. 1970). [341 F. Supp. 1244, 1247, 1248 (1972).]

The Constitution of the United States in the Fourteenth Amendment provides that no citizen shall be denied the equal protection of the laws. The U. of F. as a federally funded state school, by preferring specific groups based on racial criteria to the exclusion of this qualified applicant has denied him the equal protection of the law. In this instance, this applicant has been denied admission under the special admissions program allowing only minorities conspicuous to the State of Florida under laws alleged by the U. of F. requiring or permitting preferential treatment according to race and specific ethnic origin.

Moreover, this applicant contends that the Holland Law Center through its policy and by its actions with respect to having denied him admission to its special admissions program violates Title VI, Sec. 601;

42 U.S.C. §2000d, of the Civil Rights Act of 1964.

Relief Sought

The U. of F. Holland Law Center has a constitutional duty and obligation to this applicant as a bona fide resident of the State of Florida and as a qualified individual for its Special Admissions Program to: (1) abide by Section 601 of the Civil Rights Act of 1964, (2) cease and desist specific preferential treatment and discriminatory practices which led the U. of F. on April 1, 1976, to deny this applicant admission to its law chool under the special admissions program n the grounds of his not being a minority ıspicuous to the State of Florida, and : thereby immediately accept this appli- .nt for admission under the Holland Law enter's Special Admissions Program.

A. Criteria For Special Admissions: individual background factors

While the existence of a properly administered special admissions program is highly justified and equally desirable, its purpose should be to admit those promising individuals whose background is one of cultural, economic and educational difference rather than those members of specific minority groups solely because they are members of certain groups regardless of background factors. Justice Douglas, in delivering the opinion of the Court in Lau v. Nichols, 414 U.S. 563, 39 L.Ed.2d 1, 4 (1974), aptly described the necessity for equal educational opportunities which arise from unequal individual backgrounds.

> Every student brings to the startingline of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and continued completely apart from any contribution by the school system.

In addressing this point further, Justice Douglas, in his dissenting opinion in

DeFunis v. Odegaard, 416 U.S. 312, 330, 40 L.Ed. 2d 164, 176 (1974) stated that:

> There are many relevant factors, such as motivation, cultural backgrounds of specific minorities that the test cannot measure, and they inevitably must impair its value as a predictor.*** The price is paid by the able student who for unknown reasons did not achieve that high score -- perhaps even the minority with a different cultural background.

A significant aspect regarding any special admissions program, according to Justice Douglas, deals with the once disadvantaged applicant whose motivation has enabled him to succeed by overcoming various cultural, economic and educational barriers.

In the instant case, this applicant is an excellent example of an individual who has overcome numerous barriers, among which are: a first language other than English; immigrant parents and grandparents whose education never surpassed grade school; a low average family income over the years,

which placed him in an ethnic New York City ghetto for the first ten years of his life; along with an erratic and unstable secondary education. Despite these numerous obstacles, this applicant managed to literally lift-himself-up-by-the-bootstraps out of an ethnic-ghetto-past which tends to lock in so many of its inhabitants and go on to attend a junior college in the State of Florida. For an individual who had to work his way through college, this applicant after eight uncertain years graduated from George Washington University with a grade point average substantially close to 3.0. Recommendations from his employer and former debate professor in emphasizing his motivation and ability are impeccable. Justice Douglas continued by addressing this exact type of situation when he stated that:

> *** nor does it prohibit law schools from evaluation an applicant's prior achievements in light of the barriers that he

> had to overcome. A black applicant who pulled himself out of the ghetto into a junior college may thereby demonstrate a level of motivation, perserverance and ability that would lead a fairminded admissions committee to conclude that he shows more promise for law study than the son of a rich alumnus who achieved better grades at Harvard. That applicant would not be offered admission because he is black, but because as an individual he has the potential ***. DeFunis v. Odegaard, 416 U.S. 312, 331, 40 L. Ed. 164 (1974).

And let it be noted, that a particular applicant should not be offered admission solely because he is a member of a specified group conspicuous to the state; but instead he should be offered admission for reasons which take into consideration his past cultural, economic and educational differences in conjunction with his current qualifications, motivation and ability to succeed. Clearly, class distinctions should be abolished and individuals must be considered on their merits.

In a challenge to the special admissions program of the Downstate Medical Center of New York the court, citing Mr. Justice Douglas in DeFunis, defended and supported the medical school's special admissions program which judged minority applicants on the basis of background factors, prior achievements and potential for success rather than minority group affiliation as the primary factor. The court stated that:

> *** with respect to minority applicants, educational, cultural, economic background and probability of success in the program were considered. The court is of the opinion that there is no bar to considering an individual's prior achievements in the light of his disadvantages, culturally, economically, and educationally, as a factor in attempting to assess his true potential in a successful career. (Emphasis added). Alvey v. Downstate Medical Center of New York, 359 N.Y.S. 2d 426, 429 (1974).

The Holland Law Center clearly did not consider this applicant on the basis of background factors. Instead, the Committee de-

nied him admission under its special admissions program on the basis of not being a minority conspicuous to the State of Florida.

Granted, the U. of F. is justified in having a special admissions program, as Justice Douglas indicated; however, it cannot continue to be based on racial classification to the exclusion of other qualified disadvantaged non-minority applicants. Insofar as the U. of F. is concerned, such a policy would not be limited to blacks, Spanish-speaking people and American Indians" *** although undoubtedly groups such as these may in practice be the principal beneficiaries of it." DeFunis v. Odegaard, 416 U.S. 312, 330, 40 L.Ed.2d 164, 176 (1974). While referring to the minority admission of the University of Washington law school Justice Douglas noted that "Not every student benefited by such an expanded admissions program would fall into one of the four racial groups

invoked here, but it is no drawback that other deserving applicants will also get an opportunity they would otherwise have been denied." Supra, 341. (Emphasis added).

The implementation of background factors as criteria for special admissions to law school is a necessity. Accordingly, it is becoming widely recognized and accepted that an individual should not be denied the equality of opportunity because his cultural background did not afford him all the advantages that others may have had. In terms of social costs, a properly administered special admissions program which stresses individual background factors instead of race is highly desirable and necessary.

B. The Concept Of Affirmative Action

Both Dean Julin and Associate Dean Hunt contend that the University's "***minority admissions policy is entirely consistent with

the spirit and intent of both federal and state affirmative action legislation." (Appendix B: letter, dated July 6, 1976).

Embodied in Executive Order No. 11246 of September 28, 1965, within the meaning of Titles VI and VII of the Civil Rights Act of 1964 is the concept of affirmative action. This section states:

> The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. [Exec. Order No. 11246, 3 CFR 169, 42 U.S.C. §2000e]

Affirmative action in this context is meant to effectuate the policies and intentions of the Act within the framework of the Equal Protection clause insofar as action will be taken and maintained to afford qualified individuals treatment commensurate to that granted to others under similar situations. The floor debates on the Civil Rights Act of 1964 further substantiate this reasoning.

Senator Humphrey with specific reference to the significant section of the Act stated:

> Title VI is an authorization and a direction to each Federal agency administering a financial assistance program by way of grant, loan or contract***to take action to effectuate the basic principle of non-discrimination stated in section 601. 110 Cong. Rec. 6544 (1964)

Section 601 of the Act states that:

> No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Contrary to both Dean Julin's and Associate Dean Hunt's contention, the University of Florida's minority admissions policy is entirely inconsistent with the spirit and intent of Congress.

The University's intended equal protection has become discriminatory under the guise of the Holland Law Center's affirmative action program by preferring members of specific ra-

cial and ethnic groups to the exclusion of other qualified individuals. The concept of affirmative action so strongly rooted in the idea of non-discrimination thereby renders faulty the University's reliance on Congressional intent.

C. Interpretation Of H.E.W. Regulations Goes Beyond The Purposes Of The Civil Rights Act Of 1964

Section 601 of the Act prohibits discrimination under any program receiving federal financial assistance and section 602 of the Act authorizes H.E.W. to issue rules, regulations and orders which make certain that recipients of federal aid conduct any federally financed projects consistently with §601. Section 601 therefore is controlling, causing all regulations promulgated for that purpose to be in harmony with it. H.E.W. regulations, 45 CFR §80.3(b)(1),

specify that the recipient may not:

> (v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;
>
> (vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under the program ***

There are two reasons why the Admissions Committee is in error. First, the Committee has treated this individual differently from others in determining whether he satisfies any admission requirement in order to be provided any service under the program, regardless of applicant's qualifications under that program. Surely, that admission requirement cannot be based either on race or ethnic origin; for that is precisely the type

of treatment which the Act prohibits. Second, the Admissions Committee relies on this forbidden interpretation of the Act to deny admission to this applicant.

H.E.W. regulation, 45 CFR §80.3(b)(2) indicates that a recipient of federal funds " *** may not *** utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination *** " or has " *** the effect of defeating or substantially impairing accomplishment of objectives of the program as respect individuals of a particular race, color, or national origin." Clearly, the Admissions Committee in its conclusion implies that any deviation from such discriminatory criteria would have the effect of defeating or substantially impairing the objectives of its program as if the objectives of its program and the intent of the enabling legislation were one and the same. If the Committee's

program is based on this discriminatory criteria of race and ethnic origin as it obviously is, then the Admissions Committee is correct in its conclusion. An admissions policy which relies on racial criteria for its primary objective should be defeated. It is a disservice to both society and to those which it claims to serve. Justice Douglas, in DeFunis, indicated that race should not be the primary basis of special admissions programs as is the case at the U. of F.'s Holland Law Center.

The crucial question here is, whether the Holland Law Center's Special Admissions Policy goes beyond the purpose and intent of §601 of the Civil Rights Act of 1964. For the sake of clarity, §601 states:

> No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

H.E.W. regulation, 45 CFR §80.3(b)(5) further states:

> The enumeration of specific forms of prohibited discrimination *** of this section does not limit the generality of the prohibition in paragraph (a) of this section.

Paragraph (a) reiterates §601 of the Act. Deans Hunt and Julin concluded on July 6, 1976 that their special admissions policy was entirely consistent with the spirit and intent of federal affirmative action legislation. Unequivocally, both Associate Dean Hunt's and Dean Julin's conclusion of consistency is also in error when confronted with regulatory interpretation in light of legislative intent

D. Admissions Policy Employs Racial Classification

The Holland Law Center's admissions policy with respect to the special admissions program employs racial classifications to favor

those minority groups conspicuous to the State of Florida. In an open letter describing its minority policy for applicants to the special admissions program, the U. of F. focuses on those minority groups which it considers conspicuous within the State. " *** the Committee prefers minorities that constitute a meaningful portion of the population of this state: Blacks, Spanish-speaking people who are recent immigrants from Cuba, and American Indians." (Emphasis added). This policy is in dirict violation of the Civil Rights Act of 1964, Title VII, Section 703(j) which states that:

> Nothing contained in this subchapter shall be interpreted *** to grant preferential treatment to any individual or to any group because of race *** .

Consequently, the University's policy is responsible for denying admission to this applicant under the special admissions program.

Several of the amicus curiae briefs in DeFunis v. Odegaard, 416 U.S. 312, 40 L.Ed.2d

164 (1974) agreed that however commendable the University's goals might be, they could and should be achieved through means that took no account of race or ethnic origin. Amicus curiae brief of Advocate Society, American Jewish Committee, Joint Civic Committee of Italian Americans and UNICO National at 5 and 6 explained that "The right to equal protection has been declared to be protective of individuals of every race, rather than of groups of any race. Moreover, it is not the intent of the states' action which is controlling, but rather its effect." Unless an admissions program is created and maintained which considers background factors on an individual basis, then fulfilling the right to equal protection for individuals of all races can never become a reality. In addressing the issue of race as a measure for addmission, Justice Douglas stated:

> The consideration of race as a measure of an applicant's qualification normally introduces a capricious and irrelevant factor working an invidious discrimination. DeFunis v. Odegaard, 416 U.S. 312, 333, 40 L.Ed.2d 178 (1974).

It has been the purpose of many affirmative action programs to offer educational opportunities for qualified disadvantaged students. However, the policy adhered to by the Holland Law Center is discriminatory inasmuch as it singles out specific minorities within the State without regard to past cultural, economic, and educational differences. As a result, this policy denies admission to disadvantaged persons who would otherwise be considered on an individual basis:

> The temptation is great to attempt to right the wrongs against many minorities *** which have unfortunately existed for generations, by letting a small number of minority groups now obtain what others similarly situated will be denied. (Emphasis added). In Re Mezzacca, 340 A.2d 658, 662 (1975).

In his dissenting opinion in DeFunis v. Odegaard, Wash., 507 P.2d 1169, 1200 (1973),

Chief Justice Hale of the Supreme Court of Washington cited with approval the employment discrimination ruling in Anderson v. San Francisco Unified School District,357 F. Supp. 248, 249 (N.D. Cal. 1972), in which the court firmly rejected a racially preferential scheme for promotion of public school administrators. The court observed:

> Preferential treatment under the guise of "affirmative action" is the imposition of one form of racial discrimination in place of another. The questions that must be asked in this regard are: must an individual sacrifice his right to be judged on his own merit by accepting discrimination based solely on the color of his skin? How can we achieve the goal of equal opportunity for all if, in the process, we deny equal opportunity to some?" (Emphasis added).

Title VII Sec. 703(a) of the Civil Rights Act of 1964 states "It shall be an unlawful employment practice (1) *** to discriminate against any individual *** because of such individual's race, color, religion, sex, or national origin." In construing Title VII in

Griggs v. Duke Power Co., 401 U.S. 424, 431, 28 L.Ed.2d 163, 164 (1971), which held that job qualification standards must be performance related, the U.S. Supreme Court with respect to Congressional intent said unanimously:

> Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification. (Emphasis added).

It is the racial classification and accompanying preferential treatment instead of consideration based on factors such as background, ability and motivation which this applicant rejects outright.

While primary reliance is currently placed upon

LSAT score and GPA this tends to automatically reject individuals such as this applicant whose cultural background and work experience would preclude him from attaining high and acceptable scores. It is stated in the Holland Law Center's open letter for minority applicants that the following credentials do not guarantee admittance under the special admissions program, but that minority applicants with LSAT scores of 450 and above, WA scores of 45 or more and an undergraduate GPA substantially close to 3.0 are likely to receive serious consideration. However, the Law Center's minimum numerical qualifications can serve a useful purpose insofar as low LSAT and undergraduate GPA may mean that an individual is unqualified and unmotivated. Yet, these minimum parameters when coupled with cultural, economic, and educational background along with ability and motivation substantiated by recommendations from employers familiar with

the skills and integrity required for the successful study and practice of law become the equitable measure for admission. This qualified applicant with an LSAT score of 470, a WA score of 52 and an undergratuate GPA substantially close to 3.0 was denied admission under the program solely because he was not considered a minority conspicuous to the State of Florida.

Justice Douglas referred to the DeFunis decision of the Supreme Court of Washington, 82 Wash.2d 32, 507 P.2d 1182, in which the Court described the minority admissions policy as " *** certainly not benign with respect to non-minority students who are displaced by it." In a similar context, the U. of F.'s special admissions program is certainly not benign when based on racial classification to the exclusion of other qualified non-minority applicants. "A finding that the state school employed a racial classification in selecting

its students subjects it to the strictest scrutiny under the Equal Protection Clause." DeFunis v. Odegaard, 416 U.S. 312, 333, 40 L.Ed.2d 164, 178 (1974).

E. The Imposition Of Quotas

The Holland Law Center's interpretation of affirmative action implies a quota system for the admission of specific minority groups. When the Law Center's admissions committee explicitly states that it " *** prefers minorities that constitute a meaningful portion of the population of the state *** ", then there is no question that the U. of F. has turned its affirmative action program into a de facto quota system in direct conflict with the spirit and intent of the Civil Rights Act of 1964 as well as the Equal Protection clause. Amicus curiae brief of Advocate Society, et al. at 6 stated:

> A racial quota is no less a quota merely because it is not identified as such. Quotas based on race are inherently discriminatory and, accordingly, have been proscribed as unlawful by this Court. The Court has also construed the enactment of the Civil Rights Act of 1964 to reflect the intent of Congress to bar "discriminatory preference for any group, minority or majority, *** ." For these reasons, racially preferential admission to a state educational institution violates the Equal Protection Clause. (Emphasis added).

In arguing the existence of a "compelling state interest" in order to justify the imposition of quotas, even the court in Oburn v. Shapp, et al., 521 F.2d 142, 150 (1975), cautioned their continued use and indicated its serious "reservations and concerns *** against indiscriminate use of racial quotas as remedial devices." In Kirkland v. New York St. Dept. of Correctional Serv., 50 F.2d 420, 427 (1975) the court described the imposition of a quota system as inherently discriminatory.

> The replacement of individual rights and opportunities by a

> system of statistical classifications based on race is repugnant to the basic concepts of a democratic society.
>
> * * *
>
> The most ardent supporters of quotas as a weapon in the fight against discrimination have recognized their undemocratic inequities and conceded that their use should be limited. Commentators merely echo the judiciary in their disapproval of the discrimination inherent in a quota system.

Justice Douglas also rejected the compelling state interest argument when he stated in DeFunis that:

> The argument is that a "compelling" state interest can easily justify the racial discrimination that is practiced here. *** The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. The purpose of the University of Washington cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Irish. It should be to produce good lawyers for Americans and not to place First Amendment barriers

> against anyone. 416 U.S. 312, 341-342, 40 L.Ed.2d 164, 183 (Emphasis added).

Affirmative action programs should not be racially classified in the name of a compelling state interest as both Associate Dean Hunt and Dean Julin contend. Accordingly, the compelling state interest argument as a justification for the Holland Law Center's affirmative action program falls by the wayside.

F. Equal Educational Opportunity

Inequality is found to exist where specific benefits enjoyed by one group of students is denied to another group of students of the same educational qualifications and academic background. Minority students conspicuous to the State of Florida currently enjoy benefits of special admissions at the Holland Law Center not accorded to individual students or students of any other group with the same educational qualifications and academic back-

ground. Inequality exists where this applicant with the same educational qualifications was denied specific benefits enjoyed solely by minority students conspicuous to the State of Florida.

Brown v. Board of Education of Topeka, 347 U.S. 483, 98 L.Ed. 873 (1954) mandates that schools provide equal educational opportunities to all. This idea of equality is to be measured both in terms of what the school offers the student and by the potential which the student brings to the school. If the student had been disadvantaged with respect to other students, and had overcome many of those disadvantages he should not be penalized for any disabilities which he may still carry with him which preclude him from admittance under the regular admissions program. The University of Florida has an affirmatime duty to provide this applicant with specific benefits enjoyed by other students of the same educational qualifications and academic background.

This concept of inequality was explicitly recognized in Brown where it was noted:

> In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. Brown v. Board of Education of Topeka, 347 U.S. 483, 491-492, 98 L.Ed. 873, 879 (1954).

That the situation should have reversed itself more than 20 years after Brown, presents us with no less of a case of inequality today than existed at that time.

Further, where a state sets out to provide educational facilities and programs to its citizens, it becomes a clear contradiction in terms of public education particularly at the graduate school level, when such state institution offers educational opportunities to a select few based on either their race or ethnic origin thereby denying access to all others not of the specified racial or ethnic mix. Certainly, this sort of action has never been

the intention of either the Constitution or Congress. Equal educational opportunity is a right accorded to all on an equal basis. Referring to the opportunity of education and the obligation of a state to be certain it is carried out, the Court in Brown specified:

> Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms. Supra, 493.

The decision of the Holland Law Center constitutes a denial of equal educational opportunity which Brown was meant to provide.

CONCLUSION

A decision in the case before this Court favoring the position taken by this applicant offers an acceptable compromise. Opponents of special admissions programs stand ready to strike them down completely on the grounds of reverse discrimination. Such action would immediately create an inequitable vacuum. On

the other hand, avid proponents stand fast in favor of this preferential treatment for groups historically discriminated against. Both of these stands, however, are highly untenable. Therefore, a decision by the Court favoring the applicant's position would be more equitable whereby admissions programs would be free of racial bias and maintained on the basis of affording qualified disadvantaged individuals, in the words of Justice Douglas, "an opportunity they would otherwise have been denied." Although, undoubtedly individuals such as those cited by the University of Florida Holland Law Center may in practice be the principle beneficiaries of it.

The courts have recognized that preferential treatment based on racial classification in the name of affirmative action is discriminatory. Anderson v. San Francisco Unified School District, 357 F. Supp. 248, 249 (N.D. Cal. 1972). Simply because groups were formerly subjected

to discrimination does not justify preferential treatment to the exclusion of other qualified disadvantaged individuals. This is what Congress has proscribed. Griggs v. Duke Power Co. 401 U.S. 424, 430, 431 (1971). Consequently, the Law Center's preferential admission policy constitutes a de facto quota system which is inherently discriminatory and in violation of the Equal Protection Clause. Kirkland v. New York St. Dept. of Correctional Serv., 520 F.2d 420 (1975).

Despite the absence of a specific federal statutory provision for affirmative action in the area of educational opportunities for qualified individuals whose cultural, economic, and educational background preclude them from admission to professional schools, the courts have approved consideration based upon these background factors. Alvey v. Downstate Medical Center of New York, 359 N.Y.S.2d 426 (1974); DeFunis v. Odegaard, 416 U.S. 312, 40 L.Ed.2d

164 (1974). Furthermore, Brown v. Board of Education, 347 U.S. 483, 98 L.Ed. 873 (1954) mandates that state public schools, including graduate schools, provide equal educational opportunities to all regardless of race.

The instant case meets all the tests for invideous discrimination. First, this applicant was rejected solely because he was not considered a minority conspicuous to the State of Florida. Second, this applicant was not judged on his individual merits. Applicant is highly qualified to be admitted under a properly administered special admissions program based on racial and ethnic neutrality. Third, the Law Center's interpretation of H.E.W. regulations goes far beyond the purposes of the Civil Rights Act of 1964. Their special admissions policy is entirely inconsistent with the spirit and intent of that which Associate Dean Hunt and Dean Julin refer to as federal affirmative action legislation. Title VI, Section 601 of the Civil Rights

Act of 1964; H.E.W. regulation, 45 CFR §80.3(b)(5). All these factors aggregate into a clear showing that this applicant has been invidiously discriminated against.

April 8, 1977.

Respectfully submitted,

Ralph J. Galliano

~~Pro-Se,~~

AS AMICUS CURIAE

6109 Garfield Street

Hollywood, Florida 33024

John S. Nolan
1700 Pennsylvania Ave. N.W.
Washington, D.C. 20006

Counsel for Ralph J. Galliano
as Amicus Curiae

APPENDIX

APPENDIX A

UNIVERSITY OF FLORIDA
GAINESVILLE, 32601

SPESSARD L. HOLLAND LAW CENTER
OFFICE OF THE DEAN

November 18, 1975

Mr. Ralph J. Galliano
4106 No. Lorcom Lane
Arlington, Virginia 22207

Dear Mr. Galliano:

I regret that the volume of requests for information about minority admissions make it infeasible to write a personal reply. The enclosed information, however, is taken from a personal letter drawn for a prospective applicant whose circumstances are probably not unlike yours.

Please read it carefully. Should you need further assistance, we will try to help.

Sincerely,

Thomas H. Moore
Assistant Dean

Enclosure

Dear Interested Person:

Enclosed are materials giving pertinent information for prospective applicants about the University of Florida College of Law's Minority Student Program.

I would be very pleased if you were to apply for admission here. This University is actively searching for minority students whose credentials indicate a probability for successfully completing a rigorous course of law study. I urge you to pursue a legal education with vigorous will and determination. We are aiming for mature, intelligently aggressive persons: the kind with foresight to recognize the serious need for minorities with legal training and are not deterred or mislead by the wails, "too many lawyers!" [Be reminded that one with legal training is not required to practice law. Such persons are in business, politics, education, entertainment, etc., etc., and some are simultaneously community activists.] To be sure, there are not enough Black, Indian, and Spanish-speaking people in governmental bodies in the state of Florida. As currently constituted these bodies are unlikely to operate from a perspective that is sufficiently sensitive to developmental needs of power-weak minorities.

Toward the goal of providing legal education opportunity to segments of the community which are largely underrepresented in its rule-making circles, we encourage applications for admission from members of minority groups who are committed to one pursuit of excellence. Law students soon learn that law study requires such a commitment. Hopefully, I have targeted you with the character description here outlined.

At the Holland Law Center a biracial committee, the Minority Admissions Committee, admits or denies applicants. They screen applications and credentials, and collectively decide who shall be accepted. A high degree of commitment is difficult, if not impossible, to substantiate. Therefore, in the selection process, we evaluate more measurable qualities and skills. Considerable emphasis is placed on objective, numerical indicators of the applicant's ability to successfully handle the type of analysis, reasoning and writing required in law schools.

The critical elements of an applicant's credentials are the Law School Aptitude Test score (LSAT), the undergraduate grade point average (GPA), the Writing Ability score (WA), and the quality index for the undergraduate college attended. These must be at a level which, when combined, will project an ability to earn passing grades for the first year's work at this college of law.

While the following credentials will not guarantee admittance under our Special Admissions Program, minority applicants with Law School Aptitude Test (LSAT) scores of 450 and above, Writing Ability scores of 45 or more, and undergraduate grade point averages substantially close to 3.0 (on a 4.0 scale) are likely to receive serious consideration for the limited spaces usually available. Also, because of space limitations and Florida Board of Regents policy which restricts the number of applicants that may be accepted under the Special Admissions category (70 to 80 minority students are currently enrolled), the credentials of non-resident applicants must present comparatively superior possibilities for academic success; otherwise, the Minority Admissions Committee is bound to give preference to Florida residents.

Similarly, where credentials are nearly equal, the Committee prefers minorities that constitute a meaningful portion of the populations of this state: Blacks, Spanish-speaking people who are recent immigrants from Cuba, and American Indians.

In deference to the importance of LSAT scores, I urge you to prepare diligently and aggressively for the examination. In some cases it may be advisable to seek in-depth review courses in the rules of grammar and in the rules of composition. Similarly, any exercises that will improve proficiency in conceptual analysis, and in complex graph analysis will be highly beneficial.

Financial aid is often vital for minority students. As a Black graduate of this Law College, I can substantiate the claim that financial aid offered here equals or exceeds that offered at most non-private southern law colleges. We are authorized to waive a significant portion of the tuition and fees of enrolled minority students who successfully complete the Council on Legal Education Opportunity Program (see enclosed booklet). A few waivers (they are limited in number) may be allowed for other selected applicants. In addition, when funds are available, the Earl Warren Legal Training Program, a private source of aid, gives financial support to minority applicants whose credentials indicate a likelihood of academic success. The applicants should apply at the address listed in the enclosed booklet entitled "Financial Aid Programs".

Moreover, after one year of law study, 15-20 hours a week legal research and writing positions are periodically available for students who have demonstrated a capacity for such work. For not less than $2.00 per hour a student may research and write for various law professors, The Center for Governmental Responsibility, The International Law Center, or The Environmental-Water Law Center. Also, the libraries, as well as other divisions of the University, use student assistants. These are in addition to clerkships with private attorneys that are sometimes available.

As outlined in the college of law catalog, several University, state, and federal long and short-term loans are available. Minority students usually prefer National Direct Loans which are funded by the federal government. However, with increasing frequency, Florida residents are using Florida State loans.

Because of the necessity for preserving scarce financial resources for use in meeting some of the needs of enrolled minority students, it is not our policy to grant waivers of the application fee.

The step you may now take requires careful planning. Be advised not to come to law college with less than the wherewithal to support needs for at least one quarter. Make an effort to clear up outstanding debts (except educational loans). Be prepared to scale down personal expenditures. Educational loans are likely to be the main source of support; they are not designed to meet total wants, just basic necessities. Consider arriving at least a month in advance for securing off-campus housing. Study the enclosed pamphlet on Student Housing Information, and contact them early for applications and more information.

Should you need further assistance, do not hesitate to call or write. Sometimes personal interviews may be decisive for determining where to study law. If you can arrange it, I would enjoy detailing the offerings of a law college deemed "among the very best in American legal education" by inspectors for the American Association of Law Schools as recently as January, 1975.

I expect your application for admission soon. As one with probably potential for leadership, you are needed in a southern community.

Sincerely yours,

Thomas H. Moore
Assistant Dean

THM/kgc

Enclosure

SPESSARD L. HOLLAND LAW CENTER
UNIVERSITY OF FLORIDA
ADMISSIONS POLICY

Admission to the University of Florida College of Law is determined by the applicant's potential for success in the College of Law, the legal profession, and in other law-related careers. With these as the basic general criteria, the credentials of each applicant are measured against others applying for the same class.

Approximately seventy percent of those accepted for an entering class are early admits. They are chosen primarily by reference to the Law School Admission Test (LSAT) and Writing Ability (WA) scores, required of all applicants, and to the potential of the applicant as reflected by the cumulative grade point leading to the first degree.

Approximately twenty percent of each class is accepted from our hold category. They are selected by using, in addition to the credentials mentioned above, the following criteria:

(1) An analysis of the flow of effort, ascending or descending, reflected in the undergraduate or other academic performance.

(2) The colleges or universities where, and the disciplines in which, the applicant's degrees were earned.

(3) Academic accomplishment subsequent to the earning of the undergraduate degree.

(4) Leadership and other relevant activities (e.g., co-curricular or community activities). Since personal interviews are not a factor in the admissions process, applicants are invited to describe such activities in a letter to the Admissions Committee.

(5) The evaluation of persons in a position objectively to form a judgment as to the potential of the applicant (e.g., undergraduate professors, employers where type of work is likely to indicate potential for the study and practice of law). We do not provide evaluation forms. Letters, preferably no more than three, may be sent directly to the Admissions Committee.

(6) Maturing experience (employment, military service, etc.).

In accordance with Board of Regents' policy, a final ten percent of each class may be admitted as exceptions to the above criteria. The College of Law, consistent with the University's affirmative action program, has as one of its educational objectives the training of persons from parts of the population now under-represented in the Bars of the State of Florida and other jurisdictions.

The Board of Regents has also ruled that the State University System of Florida will accept non-Florida residents in numbers not to exceed ten percent of the total systemwide enrollment. Accordingly, admission standards for non-Florida residents are substantially higher than those for residents.

APPENDIX B

COLLEGE OF LAW • UNIVERSITY OF FLORIDA • GAINESVILLE 32611
Office of the Dean
904 • 392-0421

July 6, 1976

Mr. Ralph J. Galliano
4106 N. Lorcom Lane
Arlington, Virginia 22207

Dear Mr. Galliano:

Senator Chiles recently forwarded to Dean Julin for consideration your letter to the Senator and your supportive documentation.

Dean Julin and I discussed at length your file just prior to his departure on a two-month leave of absence. We believe that our minority admissions policy is entirely consistent with the spirit and intent of both federal and state affirmative action legislation.

Sincerely,

E.L. Roy Hunt
Associate Dean

ELRH:dkl

cc: The Honorable Lawton Chiles

"EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER"